

Exhibit B

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Legislators mull limited options in PSC redistricting bind

Calling a special session would let lawmakers preempt federal judges who are poised to redraw outdated utility board districts for the 2022 election. But it's not necessarily a popular option.

by [Eric Dietrich](#)

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HELENA — With a federal court [likely to bar the state from using its aging Public Service Commission district map in this year's election](#), lawmakers in Montana's Republican-controlled Legislature face a tricky choice: Let the election proceed with a court-ordered map, or call a special session in an attempt to preempt the courts by drawing new districts to account for nearly 20 years of population shifts themselves.

While many GOP lawmakers bristle at the idea of letting the federal judiciary dictate a map for a Montana election, interviews with legislators from both parties this week indicate the special session option may not be in the cards.

That's especially true since the maps for this year's election in theory need to be pinned down by March 14, the filing deadline state law specifies in order to give candidates enough time to campaign before the June 7 primary election.

"I hate to rule anything out right now, but my thought process is this needs to be dealt with in a regular session, not a special session," said Sen. Greg Hertz, R-Polson. "It's a complex issue, and we need public involvement too."

"I don't think there's much appetite from our caucus for a special session," said House Minority Leader Kim Abbott, D-Helena. "We don't see a way that we can productively get into session, draw districts that will be constitutional, and get those approved in the time frame we have."

The Montana Legislature meets in regular session in the winters of odd-numbered years. That means it isn't scheduled to convene again until 2023, after this year's election. However, the Montana Constitution also provides for special sessions, which focus on urgent topics that can't wait until the next regular session. They can be called either by the governor or by a majority vote of the 150 state representatives and senators.

Given the challenge of gathering support from lawmakers scattered across the state, [every special session in state history](#) has been initially called by the governor. It is, however, somewhat common for lawmakers to vote to expand the scope of a special session once they're gathered in Helena — precedent that raises the

possibility that a special session called to deal with PSC districting in the coming months could open the door to politically charged proposals on topics such as federal COVID relief funding or [election integrity](#).

The office of Gov. Greg Gianforte didn't provide a direct answer Thursday to questions about whether he is considering calling a special session to address the PSC election issue.

"Montana law rests public service commission districts with the legislature, and the governor remains willing to work with the legislature to get the job done," Gianforte press secretary Brooke Stroyke said in an emailed statement.

One advocate for a special session is Rep. Derek Skees, a hardline Republican from Kalispell who is running for a PSC seat this year. He told Montana Free Press in an interview Thursday that it would be a "travesty" to have a map drawn by federal judges instead of the Legislature.

He's said he's optimistic he'll be able to persuade his peers that a special session is necessary. "I can't say that it will. I know that I'm advocating for it," he said.

Plaintiffs in a new lawsuit argue that Public Service Commission districts, which haven't been updated by the Legislature since 2003, now have unbalanced populations. They want the districts redrawn by federal courts.

Skees also said he is worried about federal judges selecting a map that stymies his campaign by placing him in the same district as incumbent commissioner Randy Pinocci of Sun River, a fellow hardline Republican who is up for re-election this year.

The five-member PSC regulates utility companies that provide Montana consumers services such as electricity, natural gas and trash hauling. The commissioners, who are paid a \$112,443 salary, are elected to four-year terms. The seats are staggered so that either two or three commission seats are up for election in each even-year election cycle.

Two PSC seats are up for election this year: Pinocci's, which represents Great Falls and northeast Montana, and one held by termed-out commissioner Brad Johnson that includes Helena and Kalispell.

While Democratic candidates have received 43% of the votes cast in PSC elections the last two cycles, all five commission seats are held by Republicans.

Environmentalists, climate activists and Democratic candidates [have consistently criticized the PSC](#) in recent years for not being more aggressive about pushing NorthWestern Energy and other power utilities to more rapidly adopt renewable energy sources.

[The federal lawsuit about the districts](#) was filed Dec. 6 by plaintiffs Bob Brown, a former Republican who served as secretary of state in the early 2000s; former Gallatin County Commissioner Don Seifert, also a Republican; and Gallatin County resident Hailey Sinoff. They are represented by attorneys with Helena-based Upper Seven Law and Sidney-based Netzer Law Office. Both firms are also involved in separate cases challenging legislation passed by the 2021 Legislature.

The plaintiffs argue that the current [PSC districts](#), which the Legislature hasn't revised [since 2003](#), have become so wildly out of balance as a result of population shifts that they now violate the "one person one vote" principle guaranteed by the U.S. Constitution. State attorneys have acknowledged that the districts are unbalanced, but have tried to argue that the Legislature should be given a chance to redraw the maps in the 2023 session, the first regularly scheduled session where lawmakers will have access to population data from the 2020 census.

A three-judge panel appointed to hear the case has in initial rulings appeared sympathetic to the plaintiffs. In a Dec. 22 order, Judge Donald Molloy [called the current map "presumptively unconstitutional"](#) and the three judges have barred state election officials from certifying PSC candidates while the litigation remains active. In a separate order earlier this month, Molloy laid out a schedule that could see the case resolved by the state's March 14 filing deadline — an ambitious time line considering that high-profile federal court cases often take years to litigate.

In any case, lawmakers of both parties said this week that they expect the Legislature to redraw the PSC districts next year whether or not a court-ordered map is used for this fall's election. The redistricting job, they said, is properly the Legislature's responsibility.

"It's better if we take the time as a Legislature to work through what works for us," said Senate Majority Leader Jill Cohenour, D-East Helena. "I think we need to take that time."

Hertz, who has another session left in his four-year Senate term, pledged to bring legislation himself in 2023.

"I will have a bill and I will push forward on redrawing PSC districts," he said. "We definitely need to redraw the lines. There's no question about that."